Award No. 1164
Docket No. 1075
2-CB&Q-EW-'46

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 95, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Lineman R. E. Upchurch, regularly assigned as a district maintainer, is entitled to be additionally compensated in the amount of one hour per day at the applicable overtime rate during the period of March 22 to March 31, 1945, inclusive, and in the amount of two hours per day at the applicable overtime rate retroactive to April 1, 1945.

EMPLOYES' STATEMENT OF FACTS: R. E. Upchurch, hereinafter referred to as the claimant, is regularly assigned as a district maintainer on the St. Joseph Division, with a seniority date as such of January 11, 1937.

On March 22, 1945, this claimant and four Class (d) employes (groundmen) were assigned on the St. Joseph Division to work nine hours per day to April 1, and then ten hours per day, effective April 1, up to the present time.

These Class (d) employes (groundmen) were paid time and one-half for all hours worked in excess of eight hours per day, whereas the claimant was only paid his regular salary, and this is affirmed by copy of letter, submitted herewith, dated May 23, 1945, identified as Exhibit A.

The agreement dated June 1, 1940, is controlling.

POSITION OF EMPLOYES: It is submitted that linemen regularly assigned as district maintainers are subject to Rule 5, reading—

> "Eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work."

and the salary established therefor in Rule 23 is based upon eight hours constituting a day, and not nine hours or ten hours constituting a day. The negotiators of this applicable agreement nowhere therein made any exception by any remote implication that the monthly rate of pay of a district maintainer would be predicated upon any regular daily, monthly, or calendar year assignment in excess of this basic eight hour day.

Further, in Rule 8, reading—

> "Linemen regularly assigned as District Maintainers and those covered in section (a) Rule 1 shall be paid a monthly rate cover-

It follows, therefore, that pertinent rules of the collective agreement positively prohibit the rendition of an award favorable to contentions of the employes in this issue.

THE CLAIM IS NOTHING MORE THAN A REQUEST FOR A NEW RULE.

The purpose of the instant claim is to extend the provisions of Rule 6 of the controlling agreement so as to include in its scope district maintainers, thus entirely nullifying the provisions of Rule 8 of the same agreement. It is, therefore, an effort to acquire rights for the future which do not now exist.

The Railway Labor Act as amended sharply distinguishes between grievances arising out of the terms of a collective agreement and disputes relating to the formation, extension or alteration of such agreements. The Act confers jurisdiction upon the Adjustment Board to interpret the meaning or proper application of a particular contract provision. The Mediation Board has jurisdiction where there is no agreement or, as here, where it is sought to change the terms of one. In this respect, it was said by the Referee in Fourth Division Award No. 242:

> "If we should enforce the rights claimed we would be adding terms and conditions to the contract of employment which the parties themselves did not make, either express or implied, and that is neither within the power nor purpose of the Board. It is the function of the Board to settle grievances and disputes arising out of the interpretation or application of the contract as entered into by the parties."

At this point the respondent carrier desires to make it plain that the Board's authority to decide this issue is not questioned. The Board has and should assume that authority. However, the Board should not—and cannot lawfully—render a decision incompatible with the provisions of the collective agreement, which would have the effect of imposing an obligation upon carrier not assumed when the collective agreement was negotiated. Conversely, petitioner should not—and cannot lawfully in these proceedings—be relieved of the contractual duty, voluntarily assumed, to abide by the provisions of Rule 8 of aforesaid agreement. If relief is considered desirable by petitioner, it must be secured through the processes of negotiation.

SUMMARIZATION

The evidence herein and herewith submitted proves that:

1. The employes have heretofore relied entirely upon the provisions of Paragraphs (c) and (d) of Rule 3 of the collective agreement effective June 1, 1940.

2. Having so handled the dispute on the property, it must, under Section 2, Sixth and Section 3, First (i) of the Railway Labor Act as amended, and the procedural rules of the Second Division, be presented in these proceedings on the same premises, and anything not heretofore presented to the carrier cannot, under the law, be presented to the Board.

3. As thus set forth in Items 1 and 2 hereof, no rule, precedent, practice, fact or reason has been presented which will support the contentions of petitioner.

4. In the light of the foregoing, the rules relied upon by carrier and the established practices arising thereunder must be deemed to reflect the intent and understanding of the parties. The rules may not be changed except as a result of negotiations by and between the parties.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The rules in this instance speak for themselves. They are perfectly clear. District maintainers have no regularly assigned hours and are paid on a monthly basis for all services rendered regardless of the number of hours worked or the time of day when the work is done. This is the agreement the parties made.

It may be true that the monthly rate of pay was fixed in the belief that over a month or a year the average work day would not exceed eight hours. But the employes subject to the provisions of Rule 8 took their chances on that. The argument which they have made before this Division is a very persuasive one for a change in the rule. But we cannot change rules. Our jurisdiction is only to interpret them.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1946.